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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by Habitat International Coalition, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[13 March 1997]

Human rights of homeless persons

1. Habitat International Coalition, working with the National Law Center on Homelessness and Poverty, would like to draw the attention of the Commission to legislation enacted and enforced by jurisdictions within the United States that dramatically curtails and directly violates internationally recognized human rights.

2. Current estimates are that on any given night over 700,000 persons are homeless in the United States of America - living in public places or in emergency shelters. Over a year, some 2 million are homeless. According to a Columbia University study, 1/ over a five-year period from 1985 to 1990, 7 million Americans were homeless.

3. Families with children make up 35 per cent of the homeless population. Overall, 27 per cent are children. Minorities are

substantially over-represented. Of the total homeless population, 56 per cent are African-American, 29 per cent are white, 12 per cent are Hispanic, 2 per cent are Native American, and 1 per cent are Asian.

4. Emergency shelters do not provide sufficient space to meet the need. Moreover, shelters typically require their residents to leave during the day. Thus, on any given night, there are at least as many people sleeping in public places as there are sheltered, and on any given day hundreds of thousands of homeless people have nowhere to be but public places.

5. Resources to help homeless people become self-sufficient are sorely lacking. Using federal affordability guidelines, a person working a regular work week at the legal minimum wage still cannot afford the fair market rent for an efficiency apartment in any of the 50 largest cities in the United States.

6. Local governments are increasingly using criminal laws to address the growing presence of homeless people in public places. 2/ Since 1991, the National Law Center on Homelessness and Poverty has conducted four surveys of city laws and policies that criminalize activities associated with homelessness. 3/ The most comprehensive survey, completed in 1996, found that of the 50 largest cities in the United States, 54 per cent had engaged in recent police sweeps and 38 per cent had recently initiated crackdowns on their homeless residents. 4/

7. Some cities attempt to prohibit the mere presence of homeless people in the city. In Cleveland, Ohio, and Huntsville, Alabama, police have driven homeless people to city limits and left them there. 5/ The City of San Diego, California, has reportedly offered homeless people bus tickets out of town and encourages them to use shelters that are outside the city. 6/

8. Others criminalize sleeping in all public places. The Dallas, Texas, City Code makes it a crime to "sleep[] or doze[] in a street, alley, park, or other public place". 7/ There have been reports of homeless people being kicked awake and dragged out of abandoned buildings. 8/

9. Other ordinances prohibit "camping" in any public area, where "camping" is defined to include using a sleeping bag or covering oneself with a blanket. 9/ A Seattle, Washington, ordinance prohibits lying or sitting on sidewalks in downtown and neighbourhood commercial areas from 7 a.m. to 9 p.m. 10/

10. Selective and discriminatory enforcement of laws that are usually not enforced, including prohibitions on loitering, littering, jaywalking, is used to "sweep" homeless people from certain areas of a city, such as downtown business or tourist areas, or before major events. For example, in Atlanta, police conducted sweeps in advance of the Olympic Games.

11. Some cities impose broad bans on begging. For example, a Chicago law prohibits the solicitation of alms in public. Other broad bans include

prohibitions on begging within other prohibitions: for example, some laws define "disorderly conduct" to include being "idle, dissolute or found begging"; 11/ others prohibit "wandering ... or go[ing] about ... in public or private ways ... for the purpose of begging". 12/

12. In addition, many cities restrict individuals or groups attempting to assist homeless people. 13/ Hartford, Connecticut recently amended its laws to restrict the establishment of new shelters and soup kitchens to very limited areas of the city. San Francisco, California, enforced laws against individuals distributing free food to hungry people in a public park. Some deter business establishments from serving homeless clients.

Rulings of United States courts and position of the Government of the United States

13. Homeless persons and their advocates have challenged some of these laws and policies under the United States Constitution. Some courts have ruled in favour of homeless persons. 14/ But the rulings have been inconsistent, and courts have also ruled against protecting the rights of homeless people. 15/ The Government, through the Civil Rights Division of the Department of Justice, has intervened as an amicus curiae to protect the rights of homeless persons in two cases. However, it has not taken action in all cases nor has it taken action to prevent such laws and policies.

Violations of protections guaranteed by the International Covenant on Civil and Political Rights

14. Article 12 (1) provides that "[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence". In jurisdictions which have enacted the type of laws described above, homeless people have been deprived of their liberty of movement and freedom to choose their residence. In some cases they are forcibly removed from cities; in others they have been prohibited from performing basic activities such as eating or sleeping, affectively prohibiting them from residence there.

15. Article 7 prohibits cruel, inhuman or degrading treatment or punishment. Homeless persons rarely choose to be homeless or to live in public places. Punishing homeless people for performing essential life-sustaining activities such as sleeping and eating in public - in the absence of any alternative private place to perform them - effectively punishes them for their involuntary condition of being homeless.

16. Article 26 provides that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as ... property ... or other status". Legislation aimed at depriving homeless people of rights guaranteed other segments of the population violates the object and purpose of article 26. Selective enforcement of existing laws so as to affect only homeless people also runs foul of the guarantee in article 26 of equal treatment under law.

Recommendations

17. Habitat International Coalition, working with the National Law Center for Homelessness and Poverty, calls on the United States to take all necessary steps to assure that laws and policies that violate the internationally recognized human rights of homeless people are repealed and similar future legislation proscribed:

(a) Local governments should not be permitted to criminalize public performance of necessary life activities, such as sleeping and eating, in the absence of private spaces to perform them;

(b) The Government of the United States should participate on the side of homeless persons in court challenges to such laws and policies;

(c) The Government of the United States should condition funding to local governments on their agreement not to violate the human rights of homeless people;

(d) The Government of the United States should actively work with local governments on constructive alternatives such as providing and raising resources to help homeless people to self-sufficiency.

18. Habitat International Coalition encourages the Commission to act immediately to encourage the United States to take action to repeal and prevent further enactment of legislation that crimializes activities associated with homelessness.

Notes

1/ See National Law Center on Homelessness and Poverty, Mean Sweeps, p. i.

2/ See, generally, Maria Foscarinis, "Downward spiral: homelessness and its criminalization", 14 Yale Law & Policy Review 1, (1996).

3/ See Mean Sweeps, note 1 above, (1996); see also National Law Center on Homeless and Poverty, No Homeless People Allowed (1994); National Law Center on Homeless and Poverty, The Right to Remain Nowhere (1993); National Law Center on Homeless and Poverty, Go Directly to Jail (1991).

4/ Mean Sweeps, p. ii.

5/ See Church v. Huntsville, No. Civ. A. 93-C-1239-S, 1993 WL 646401, at *2, (N.D. Ala. 23 Sept. 1993); see also Clements v. City of Cleveland, 1:94 CV 2074 (1994).

6/ See Mean Sweeps, pp. 13-14.

7/ Dallas, Texas, City Code, paras. 31-13 (a) (1) (1992).

8/ Mean Sweeps, see note 1, p. 15.

9/ See Santa Ana, Cal., City Ordinance NS 2160 (3 April 1992) amending Santa Ana, Cal. City Code paras. 10-402 (1992). In 1996, Atlanta, Georgia, passed an ordinance with extremely stringent prohibitions on "urban camping".

10/ See Mean Sweeps, supra n. 2, at 15.

11/ Miami, Florida, Code paras. 37-17 (2) (1990).

12/ Massachusetts General Laws, c. 272 para. 66.

13/ See generally, National Law Center on Homelessness and Poverty, No Room at the Inn (1995).

14/ For example, Pottinger v. Miami, 76 F. 3d 1154 (11th Cir. 1996).

15/ See, for example, Doucette v. Santa Monica, No. 95-1136 (C.D. Cal. 30 September 1996).